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IN THE

Supreme Court of the United States

OCTOBER TERM, 1963.

No. 609.

CHARLES H. RUBY, *et al.*,
Petitioners,

v.

AMERICAN AIRLINES, INC.,
Respondent,

and

NICHOLAS J. O'CONNELL, *et al.*,
Additional Respondents.

JOSEPH V. MANNING, *et al.*,
Intervenors.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

BRIEF FOR AMERICAN AIRLINES, INC. IN OPPOSITION TO CERTIORARI.

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I. Opinions Below.

The opinions of the District Court for the Southern District of New York, by Judge Inzer B. Wyatt, are not yet officially reported but have been published in 48 C.C.H. L. C. ¶¶18,438 and 18,439 at 1 and are printed in the appendix to the petition for certiorari beginning at pages 21a and 83a.*

* Pages of the appendix to the petition for certiorari are referred herein with the suffix "a". All citations in this brief are to the opinions below unless otherwise designated.

The opinion of the Second Circuit Court of Appeals, by Judge Friendly and concurred in by Judges Clark and Waterman, also is not yet officially reported but has been published in 48 CCH L. C. ¶18,476 and is printed in petitioners' appendix beginning at page 1a.

The District Court denied a motion for a preliminary injunction to compel respondent American Airlines, Inc. ("American") to bargain exclusively with petitioner ("ALPA") and to prohibit American from bargaining with the additional respondents ("Allied"). The District Court also entered summary judgment in favor of the respondents. The Court of Appeals unanimously affirmed.

II. Lack of Jurisdiction.

Both courts below, apart from making dispositive findings on the merits, found that this case involves a representation dispute within the exclusive jurisdiction of the National Mediation Board ("NMB") (Court of Appeals opinion, 17a-18a; District Court opinion 84a). It is well settled that courts are without jurisdiction in such cases. *General Committee* v. *Missouri-K.-T. R. Co.*, 320 U. S. 323 (1943); *Brotherhood of Railway and Steamship Clerks* v. *United Transport Service Employees*, 320 U. S. 715 (1943), reversing per curiam 137 F. 2d 817 (D. C. Cir. 1943); *General Committee* v. *Southern Pacific Co.*, 320 U. S. 338 (1943); *Flight Engineers Int'l Ass'n* v. *Eastern Air Lines, Inc.*, 311 F. 2d 745 at 747 (2 Cir. 1963), certiorari denied, 373 U. S. 924; *Division 141 Order of Railroad Telegraphers* v. *Leighty*, 298 F. 2d 17 (4 Cir. 1962), certiorari denied, 369 U. S. 885; *Rose* v. *Brotherhood of Railway and Steamship Clerks*, 181 F. 2d 944 (4 Cir. 1950), certiorari denied, 340 U. S. 851.

Subsequently moreover, the NMB certified Allied as the pilots' bargaining representative. A true copy of the cer-

tification is set forth in Appendix A of this brief. By virtue of such certification an *a fortiori* case of lack of jurisdiction is presented. *Switchmen's Union v. National Mediation Board*, 320 U. S. 297 (1943); *B.E.S. Flight Engineers Int'l Assn. v. National Mediation Board*, 314 F. 2d 234 at 237 (D. C. Cir. 1962); *U.N.A. Chapter of Flight Engineers Int'l Assn. v. National Mediation Board*, 294 F. 2d 395 (D. C. Cir. 1961 certiorari denied, 368 U. S. 956 (1962); *Air Line Stewards Assn'n. v. National Mediation Board*, 294 F. 2d 910 (D. C. Cir. 1961 certiorari denied, 368 U. S. 830; *De Arroyo v. Tenkhoff*, 258 F. 2d 157 (D. C. Cir. 1958); *Railway Airline Navigators, S.A. v. Reynolds*, 241 F. 2d 744 (D. C. Cir. 1957); *Radio Officers' Union v. National Mediation Board*, 181 F. 2d 801 (D. C. Cir. 1950); *United Transport Service Employees v. National Mediation Board*, 141 F. 2d 724 (D. C. Cir. 1944); *National Federation of Railway Workers v. National Mediation Board*, 141 F. 2d 725 (D. C. Cir. 1944).

III. Statutory Provisions.

The labor relations of American and its pilots are governed by the Railway Labor Act (45 U. S. C. 151). In specific terms the Act confers upon employees the right to be represented by whomever a majority shall select (45 U. S. C. 152 Fourth):

> "Employees shall have the right to organize and bargain collectively through representatives of their own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

Unlike the National Labor Relations Act (as amended 29 U. S. C. 151 et seq.), the Railway Labor Act makes the term

going right of majority representation ". . . a part of the contract of employment between the carrier and each employee" which is ". . . binding upon the parties, regardless of any other express or implied agreements between them" (45 U. S. C. §152 Eighth).

The court below found it unnecessary to consider respondents' contentions that injunctive relief was barred by §§7 and 8 of the Norris-LaGuardia Act (18a, fn. 11). Section 8 provides (29 U. S. C. §108):

> "No restraining order or injunctive relief shall be granted to any complainant who has failed to comply with any obligation imposed by law which is involved in the labor dispute in question, or who has failed to make every reasonable effort to settle such dispute either by negotiation or with the aid of any available governmental machinery of mediation or voluntary arbitration."

Like Section 8 of the Norris-LaGuardia Act, the Railway Labor Act also contains an "every reasonable effort" requirement (45 U. S. C. §152 First).

IV. Questions Presented.

In addition to the questions presented by petitioners, the following questions will be argued on behalf of American if contrary to the position taken in this brief, certiorari should be granted:

A. Whether an injunction is available to require bargaining with a union other than that named in a certification issued by the NMB in the same dispute.

B. Whether relief is barred, under general equity principles and the Norris-LaGuardia Act, by ALPA's failure to make "every reasonable effort" to settle the dispute.

V. Statement of the Case.

The Secretary of Labor brought representatives of American and ALPA together in July 1962 to negotiate a settlement of the crew complement dispute (34a-36a). The crew complement dispute concerned manning in the cockpit of jet aircraft, and had produced several nation-wide airline strikes. The negotiations were conducted under the auspices of Mr. Leverett Edwards, Chairman of the National Mediation Board (50a).

ALPA's Negotiating Committee in July 1962 was the same as the committee with which American bargained until after this suit was commenced. Contrary to the impression sought to be created in ALPA's petition, there was no change in the pilot Negotiating Committee (other than the resignation of one member) (52a).

The settlement which ALPA later found to be objectionable was proposed by ALPA itself, through its own Negotiating Committee, on August 1, 1962 (37a). American agreed to the proposal in September, after some difficult bargaining, upon being assured that the proposal was acceptable under ALPA policy (38a-39a). ALPA's Vice President and a staff negotiator were present during the negotiations (38a-39a).

The ALPA proposal ultimately took the form of an agreement initialed by the parties and given to the mediator as settled on December 1, 1962 (42a). It is this agreement which gave rise to the internal dispute within ALPA (6a).

American resumed bargaining with the committee in January 1963 as contemplated by the initialed agreement. Although ALPA's President objected, the committee was still ALPA's official Negotiating Committee; its members were not expelled from ALPA until April 26, 1963

(69a). In resuming negotiations, American acted pursuant to advice from the Chairman of the NMB, who continued to participate until a settlement was reached on March 15, 1963 (49a-50a, 65a-66a).

ALPA would not sign the agreements embodying the settlement (68a). The American pilots therefore formed the Allied Pilots Association and, on April 24, petitioned the NMB for an election (8a). ALPA, by virtue of a number of court orders obtained in the District of Columbia, succeeded in delaying the election. Finally, on July 9, American recognized Allied and signed agreements with it. Such action was based on evidence that over 90% of the pilots desired Allied to represent them and that they would strike if the benefits of the contract were further delayed (10a).

In ALPA's action against the NMB in the District of Columbia, the District Court issued restraining orders and, subsequently, a preliminary injunction against the holding of an election. Respondents were not parties. The preliminary injunction expired with the issuance of the Southern District's decision, but the District of Columbia Court of Appeals granted ALPA a further injunction in view of the appeal in the Second Circuit (Appendix B hereof). When the Second Circuit decided against ALPA, the District of Columbia Court of Appeals dissolved the injunction (Appendix C hereof). The election was thereupon conducted, and 93% of the valid ballots were cast for Allied. Allied received a certification from the NMB on November 13, 1963 (Appendix A hereof).

ALPA's appeal is pending in the District of Columbia Court of Appeals. Briefs have been submitted, but no date has been set for oral argument. The question in that appeal is whether the NMB followed appropriate procedures.

VI. Argument.

A. Suggestion of Mootness.

The decision of the court below is dated September 16, 1963 (20a); the NMB's certification is dated November 13, 1963 (Appendix A hereof). The certification recites "that this Board has jurisdiction over the dispute involved herein", and "certifies that the Allied Pilots Association has been duly designated and authorized to represent, for the purposes of the Railway Labor Act, the craft or class of Air Line Pilots, employees of American Airlines, Inc., its successor and assigns."

Even if this action were a direct attack on the Board's action, established precedent, cited *supra* at page 3, indicates that ALPA's position is without merit. However, this is not a direct attack on the Board's action. The Board is not a party and the certification therefore, in respondents' view, renders this case moot.

It is inconceivable that the federal courts would permit a collateral attack on a certification by the Board to require bargaining contrary to such certification. In *Order of Railway Conductors* v. *Pennsylvania R. Co.*, 323 U. S. 166 at 171-3 (1944), the Court dismissed certiorari on precisely these grounds:

> "The third, fourth and fifth prayers in effect request a declaration that the plaintiff is the representative of the road conductors for bargaining notwithstanding the board's certification to the contrary. Since the election and certification could not be annulled without making the board a party, that result cannot be obtained by indirection by having the court substitute itself for the board, or declare,

> independently of the board, who is the accredited representative of the plaintiff."
>
> . . . . . .
>
> "We do not reach the question . . . whether the courts may afford relief where the board refuses or fails to perform a function delegated to it by Congress, since the board is not a party."

See also *Grand Int'l Bhd. of Locomotive Engineers* v. *Morphy*, 109 F. 2d 576 at 578 (2 Cir. 1940), certiorari denied, 310 U. S. 635. In *Rose* v. *Brotherhood of Railway and Steamship Clerks, etc.*, 181 F. 2d 944 at 947 (4 Cir. 1950), Judge Parker said:

> "... the [National Mediation] board has not been made a party to the proceeding, and the courts certainly may not set aside its orders behind its back."

ALPA's separate action now pending against the NMB in the District of Columbia makes unnecessary in any event the review here of questions involving the Board's procedures.

B. Certiorari Should Not Be Granted to Review a Hypothetical Case.

Both courts below disposed of ALPA's contentions on jurisdictional grounds and, alternatively, on the merits. After considering over 3,000 pages of transcript, hundreds of exhibits, and hundreds of pages of depositions—the product of weeks of hearings—the District Court said, "Once the facts have been analyzed and considered chronologically, the disposition of ALPA's motions is not difficult" (74a).

The hypothetical character of the case described in ALPA's petition is demonstrated by the questions pre-

sented (petition, 2-3). The first question presupposes that there has been "interference, assistance and coercion" —which both courts below found had not occurred. The second question presupposes that American negotiated with a "committee of individual employees". The courts below found, however, that the committee in question was ALPA's own official Negotiating Committee (12a-13a, 37a, 45a, 49a, 51a-53a)—the members were not expelled from ALPA until more than a month after negotiations had been concluded (66a, 69a).

1.

No amount of straining can convert this into a case of employer interference or assistance, for the findings on which to predicate such a case are missing. ALPA's contention that there was a sinister scheme to break up the union was found by the District Court to be baseless (77a):

> "There is no showing [of] influence or coercion on the part of the Company nor any unlawful assistance by the Company in the break away from Alpa and in the organization of Allied.
>
> "The Company had nothing to do with the creation of the dispute within Alpa, nor is there any evidence of any preference by the Company not to have Alpa."

Concerning American's good faith, "consideration of all the evidence . . . leads to a conclusion that in an unhappy situation the Company did act in good faith and without any improper influence, coercion or assistance with respect to any of its pilot employees"; "the Company never suggested that its pilots leave Alpa . . ."; "there is no evidence that the Company suggested, encouraged or even knew in advance about the determination of the American pilots to leave Alpa . . ."; "American displayed no interest in

whether its employees left Alpa or not, certainly made no promise conditioned on their leaving Alpa or to induce them to leave Alpa, and at all times was willing to make agreements with Alpa if its own employees so desired" (District Court opinion, 51a, 53a, 68a, 78a).

2.

What the petition for certiorari refers to at least 31 times as the "O'Connell Committee" was found by the District Court to be ALPA's own official Negotiating Committee (37a). The Court of Appeals said (12a-13a):

> "Rather than refusing to deal with the union's bargaining representative and negotiating with the employees directly, as the employer did in *Medo*, American dealt for months with the very group with which ALPA's Constitution and By-Laws and Policy Manual told it to deal; and when an impasse developed through ALPA's refusal to accept the results of the negotiation, a refusal wholly within its rights, ALPA was unable to supply a substitute negotiating committee that accorded with past practice and its own Policy Manual."

The negotiations in question ". . . were attended by Chairman Edwards of the NMB or mediator O'Connell or mediator Schoonover; sometimes Chairman Edwards and one of the other mediators would both attend. All the negotiating meetings indicated were either arranged by, or the time and place had the approval of, the NMB personnel" (District Court opinion, 38a; *cf.* 55a).

When ALPA objected to the continuation of negotiations with its own official Negotiating Committee, "American consulted Chairman Edwards of the NMB; he advised that the company had no choice but to bargain with the committee" because ". . . it was the same committee as

before and . . . there was no other committee with which to negotiate" (Court of Appeals' opinion, 7a; District Court opinion, 49a-50a).

When American resumed bargaining with the Negotiating Committee, it was represented that the Committee "could 'very easily guarantee' at least a 75% approval"—a representation which, as the District Court found, "there seems to have been no reason whatever for the Company to doubt" (54a). When the mediator later counted authorization cards, he found that 84% of the pilots favored Allied, ded by the same individuals who had constituted the Negotiating Committee; when American recognized Allied, more than 90% of the pilots so desired; when the National Mediation Board counted secret ballots, it found that Allied had received 93% of the valid ballots—or 1280 as opposed to 99 for ALPA (Court of Appeals opinion, 9a-10a; Appendix A hereof).

3.

The foregoing findings of fact are entitled to great weight. The District Court's findings by themselves may not be set aside unless "clearly erroneous". Fed. R. Civ. P. 52(a). See *United States* v. *National Association of Real Estate Boards*, 339 U. S. 485 at 495-6 (1950). As affirmed by the Court of Appeals, the findings become the work product of two courts, and entitled to respect as such. Under the "two court" rule, such findings are conclusive: *Graver Mfg. Co.* v. *Linde Co.*, 336 U. S. 271 at 275 (1949), and cases cited therein; *Virginian Railway* v. *System Federation No. 40*, 300 U. S. 515 at 542 (1936); *Texas, New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548 at 558 (1930). On these findings alone, therefore, certi-

orari should be denied. *Stern & Gressman, Supreme Court Practice* 140-141 (3d ed. 1962).

C. There Is No Issue of Importance Warranting Certiorari.

ALPA can point to no case which even remotely suggests that the federal courts should grant an injunction to require bargaining with ALPA "even if", as it contends, "each of the affected employees were now shown to be in support of Allied" (petition, 63). This case would present an issue of importance justifying certiorari only if the decision below had been otherwise, for an injunction requiring bargaining with ALPA contrary to the majority rule provisions clearly set forth in the Railway Labor Act, and made by it a part of every employee's contract, would be astonishing indeed. In urging a result contrary to the wishes of over 90% of the employees, ALPA would have this Court ignore the obvious point that

> "... the interests to be protected are primarily those of the employees, importantly including, of course, their right to effective union representation, rather than of the union itself." *NLRB* v. *Superior Fireproof Door & Sash Company*, 289 F.2d 713 at 723-4 (2 Cir. 1961).

Moreover, the Railway Labor Act cases uniformly hold that Congress did not intend for the federal courts to work at cross purposes with the NMB in designating the majority representative (see the cases cited *supra*, pp. 2-3).

ALPA's petition assures us that the decision below, together with the District of Columbia case involving the NMB, "have established that" there is no remedy for employer "interference, coercion and assistance" and that there is no duty to bargain exclusively with the bargaining representative (petition, 4). However:

1. This case does not involve "interference, coercion and assistance", as the courts below found.

2. Judge Friendly specifically recognized "the duty of the courts to require the carrier to bargain with the duly designated representative" (13a).

3. When employer interference exists, the NMB may act to set aside an election—action which it obviously concluded not to be justified here. *Matter of Brotherhood of Railway and Steamship Clerks (Allegheny Airlines, Inc.)*, NMB Case No. R-3470 (1962).

4. In asking the federal courts to "fill the supposed statutory vacuum" (petition, 4), ALPA ignores Section 2 Tenth of the Railway Labor Act which requires criminal proceedings if a carrier has engaged in "interference, influence, or coercion"—proceedings which, significantly, have not been initiated (45 U. S. C. §152 Tenth).

Thus no issue of importance justifying certiorari is raised by the Court of Appeals' decision—the facts are dispositive, and ALPA received not one day in court but two: (i) its claims of employer interference and coercion were fully developed in a 21-day hearing by the District Court and findings of fact were entered against ALPA*, and (ii) the National Mediation Board conducted a separate investigation in which ALPA was a party, and certified Allied. With respect to ALPA's claim that the NMB had failed to make an investigation, the Court of Appeals said (14a-15a):

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* During oral argument, the following colloquy occurred with ALPA's counsel (transcript of oral argument, 29):

"Judge Friendly: If we should think the court had jurisdiction, do you think all the evidence is in that anybody could have offered?

Mr. Weiss: I agree with that.

Judge Waterman: Even if we should disagree with you?

Mr. Weiss: Yes, I think so, your Honor."

> "We are not required to decide whether relief for failure of the Board to make a proper investigation could ever be granted in an action to which the Board is not a party. For the record shows that the Board performed its duty. True, no testimony was taken, as it was in *WES* case, but the Board's manner of investigation was not only as good but better under the circumstances. As we are told by an affidavit of its Assistant Executive Secretary, it utilized pleadings, exhibits, and portions of the record already made in this action, which each of the three members reviewed. In addition it had the important benefit of its own intimate knowledge of the negotiations, derived from the participation of its representatives therein. ALPA has told us of no additional material facts it would have presented if the Board had given it a further opportunity; its complaint relates not so much to the adequacy of the information before the Board as to Board's conclusion that no wrong had been done."

D. No Conflict in Decisions Is Involved.

The cases cited *supra* at pages 2-3 show remarkable uniformity of result in this area. As for ALPA's allegation of a conflict with the District of Columbia Court of Appeals (petition, 29-30), examination of the opinion in the case cited reveals the contrary to be true: it says that earlier decisions of this Court "foreclose the question we have here and deprive the courts of all rights of interference" when an NMB certification has occurred. *Order of Railway Conductors* v. *National Mediation Board*, 141 F. 2d 366 at 368 (D. C. Cir. 1944).* Furthermore, the opinion of the court below shows that it in fact applied the standards

* ALPA's petition fails to note that subsequently certiorari was dismissed in this case *sub nom. Order of Railway Conductors* v. *Pennsylvania R. Co.*, 323 U. S. 166 (1944).

enunciated by the District of Columbia Court of Appeals in a recent case, *WES Flight Engineers Int'l Ass'n* v. *National Mediation Board*, 314 F. 2d 234 (D. C. Cir. 1962), and found it to be "a decision which weighs heavily against ALPA's entire claim" (14a).

The attempt to manufacture a conflict out of a decision of the District of Columbia District Court, in which an appeal is pending, also must fail under established certiorari principles. See *Stern & Gressman, Supreme Court Practice* 131 (3d ed. 1962).

Thus no "conflict of decision" basis for certiorari has been presented (Rule 19).

E. Certiorari Would Serve No Useful Purpose Because There Are Independent Grounds Sustaining the Decision Below.

The Court of Appeals found it unnecessary to consider the contentions that ALPA was barred from equitable relief by its failure to comply with the "every reasonable effort" requirements of the Norris-LaGuardia Act, the Railway Labor Act, and general principles of equity (18a, fn. 11). These grounds alone, however, would sustain the result below:

1. "... mediation by the NMB proved unsuccessful and ALPA declined a suggestion of arbitration which American had accepted" (Court of Appeals opinion, 5a). Refusal of arbitration by itself precludes injunctive relief. Section 8 of the Norris-LaGuardia Act provides that "No ... injunctive relief shall be granted to any complainant ... who has failed to make every reasonable effort to settle such dispute ... with the aid of ... voluntary arbitration" (29 U. S. C. 108). An injunction was denied for failure to

satisfy this requirement in *Brotherhood of Railway Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50 (1944).

2. Nor did ALPA satisfy the Section 8 requirement of invoking the "aid of any available governmental machinery of mediation" in advance. According to ALPA's version of the facts, American refused to negotiate with it in January and thereafter (petition, 34-35). However, the NMB is specifically given jurisdiction over disputes "where conferences are refused", and ALPA did not invoke that jurisdiction (45 U. S. C. §183(b)). See *IAM* v. *Northwest Airlines, Inc.*, 304 F. 2d 206 at 211-212 (8 Cir. 1962); cf. *Manion* v. *Kansas City Terminal R.*, 353 U. S. 927 (1957); and *Hilbert* v. *Pennsylvania R.*, 290 F. 2d 881 at 885 (7 Cir. 1961), certiorari denied, 368 U. S. 900.

3. Nor was ALPA's withdrawal from negotiations being conducted under the auspices of the chairman of the NMB consistent with "every reasonable effort". *Butte, Anaconda & Pacific R.* v. *Brotherhood of Locomotive Firemen & Enginemen*, 268 F. 2d 54 at 56, 60 (9 Cir. 1959), certiorari denied, 361 U. S. 864; *Rutland Railway Corp.* v. *Brotherhood of Locomotive Engineers*, 307 F. 2d 21 at 39 (2 Cir. 1962), certiorari denied, 372 U. S. 954.

4. Finally, ALPA's refusal to sign agreements negotiated by its official Negotiating Committee, contrary to past practice, lies strongly against it. See *NLRB* v. *Shannon*, 208 F. 2d 545 (9 Cir. 1953), *NLRB* v. *Gittlin Bag Co.*, 196 F. 2d 158 (4 Cir. 1952), and *Rice Lake Creamery Co.*, 131 NLRB 1270, enforced, 302 F. 2d 908 (D. C. Cir. 1962), certiorari denied, 371 U. S. 827. In *Lebus* v. *Local 1800, International Longshoremen's Association*, F. Supp. ___, 46 CCH L. C. ¶18,106 (D. C. La. 1963) (not yet officially

reported), the court agreed with the NLRB that "probable cause" of bad faith bargaining consisted of an international union's refusal, because of outstanding labor disputes involving other employers, to approve an agreement negotiated by the union's representative. The court said (47 CCH L. C. at p. 28,546):

> "This refusal to negotiate, refusal to sign, refusal to bargain in good faith for the benefit of the employee and the employer dealing in a perishable commodity, has been found to be an unfair labor practice.
>
> "This court cannot countenance the inconsistency of creating a separate bargaining establishment in the Banana Handlers Council an then refusing to give credence to what the Council does."

F. Certiorari Should Be Denied Because the Petition Violates the Rules of This Court.

The petition for certiorari fails to satisfy the basic requirements, enunciated by the Court, that it

> "... contain *appropriate* references to the record,"
>
> —citations were omitted on pages 16, 18, 22, 23, 25, 50 (first footnote), 54, 59, and 61*—
>
> "and present with *studied accuracy*,"
>
> —inaccurate and misleading references are listed in Appendix D hereof—

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* Cf. Rule 40(2). Eleven days after the petition was served, the citations were provided by letter, upon demand. It then became apparent that an adequate record had not been filed (Rule 21). Petitioners had knowledge of this fact, but the record still has not been filed and the 90-day period has expired—judgment was entered below on September 16, 1963. Nor did petitioners seek an enlargement of time, and an application for an extension now would be barred by Rule 34(2). "The certified record must be filed within the time limit for petitioning for certiorari"—"these time limits are jurisdictional." *Stern & Gressman, Supreme Court Practice*, §§6.23, 6.1, pp. 227, 202 (3d ed. 1962).

"*brevity*"

—the petition is 72 pages long; "rarely should 30 pages be exceeded"*—

"*and clearness*"

—lack of clarity is demonstrated by the involved questions of 151 and 89 words respectively on pages 2 and 3 of the petition—

"whatever is essential to ready and adequate understanding of points requiring our attention. . . ." *Furness, Withy & Company* v. *Yang-Tsze Insurance Ass'n*, 242 U. S. 430 at 434 (1917) (italics in original); Rule 23(4).

Conclusion.

Certiorari should be denied and the petition dismissed.

Respectfully submitted,

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GEORGE A. SPATER,
H. WAYNE WILE,
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December 20, 1963.

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* *Stern & Gressman, Supreme Court Practice* 258 (3d ed. 1962). Petitions for certiorari have been denied because of excessive length alone. See *Kennemer* v. *Billington*, 323 U. S. 709 (1944); *Tigar* v. *Lozier*, 275 U. S. 496 (1927).

Appendix A.

NATIONAL MEDIATION BOARD

WASHINGTON

IN THE MATTER *of* REPRESENTATION OF EMPLOYEES *of the* AMERICAN AIRLINES, INC. Air Line Pilots.	CASE NO. R-3619 CERTIFICATION November 13, 1963

The services of the National Mediation Board were invoked by the Allied Pilots Association to investigate and determine who may represent for the purposes of the Railway Labor Act, as provided by Section 2, Ninth, thereof, the craft or class of Air Line Pilots, employees of American Airlines, Inc.

At the time the application was received, these employees were represented by the Air Line Pilots Association, International, AFL-CIO.

The Board assigned Mediator A. Alfred Della Corte to investigate.

FINDINGS.

The investigation disclosed that a dispute existed among the employees concerned and by direction of the Board, the mediator was instructed to conduct an election by ballot box, using an agreed to eligible list to determine the employees' representation choice.

The following is the result of the election as reported by the mediator on November 7, 1963.

Appendix A.

NUMBER OF EMPLOYEES VOTING:

	Air Line Pilots Association International, AFL-CIO	Allied Pilots Association	Any Other Org. or Individual	Void Ballots	Number of Employees Eligible
Air Line Pilots	99	1,280	1	13	1,551

The National Mediation Board further finds that the carrier and employees in this case are, respectively, a carrier and employees within the meaning of the Railway Labor Act, as amended; that this Board has jurisdiction over the dispute involved herein; and that the interested parties were given due notice of investigation.

CERTIFICATION.

Therefore, the National Mediation Board certifies that the Allied Pilots Association has been duly designated and authorized to represent, for the purposes of the Railway Labor Act, the craft or class of Air Line Pilots, employees of American Airlines, Inc., its successors and assigns.

By order of the NATIONAL MEDIATION BOARD.

E. C. THOMPSON,
Executive Secretary.

Appendix B.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

September Term, 1962

No. 18,060.

AIR LINE PILOTS ASSOCIATION, INTERNATIONAL, *et al.*,
Appellants,
v.
NATIONAL MEDIATION BOARD, *et al.*,
Appellees.

Before: Wilbur K. Miller, Fahy and McGowan, Circuit Judges.

ORDER

This case came on for hearing on appellants' motion for stay pending the hearing and determination of this appeal, and said motion was argued by counsel.

On consideration whereof, and in view of the pendency of the appeal in *Air Line Pilots Association, International, et al., v. The American Airlines, Inc., et al.*, in the United States Court of Appeals for the Second Circuit, it is

ORDERED by the court that appellees be, and they are hereby, enjoined from proceeding with a representation election among the craft or class of pilots and co-pilots of American Airlines, Inc., until further order of this court.

Per Curiam.

Dated: Aug. 22, 1963

Appendix C.

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT.

September Term, 1963

No. 18060

AIR LINE PILOTS ASSOCIATION INTERNATIONAL, *et al.*,
Appellants,
v.
NATIONAL MEDIATION BOARD, *et al.*,
Appellees.

United States Court of Appeals for the District of Columbia Circuit Filed Oct. 23, 1963 /s/ Nathan J. Paulson Clerk

Before: Wilbur K. Miller, Fahy and McGowan, Circuit Judges, in Chambers.

ORDER

On consideration of appellees' motion for dissolution of injunction, of appellants' opposition thereto, and of appellees' reply; and on consideration of the motion of Allied Pilots Association for leave to file memorandum as *amicus curiae*, it is

ORDERED by the court that the motion of Allied Pilots Association for leave to file memorandum as *amicus curiae* be granted, and the clerk is herby directed to file the said memorandum of *amicus curiae* in this case, and it is

FURTHER ORDERED by the court that the order of this court entered herein on August 22, 1963, enjoining appellees from proceeding with a representation election until further order of this court, is hereby dissolved.

Per Curiam.

Dated: Oct. 23, 1963

Appendix D.

Errors and Omissions in ALPA's Petition for Certiorari

Petition Page	Errors and Omissions
17	P. App. 73-75 is cited as support for the statement that "The existence and contents of this document did not become known to ALPA until several months thereafter". Not only does the testimony cited not support the statement, but there is undisputed evidence in the record that ALPA Vice President Harold Miller and ALPA Staff Negotiator Ralph Harkenrider, actively participated in the drafting of the document. Moreover, the District Court expressly found that ALPA President Ruby had full knowledge of the attitude of ALPA's negotiating committee and that the point, therefore, was "without much significance" (78a).
18	Petitioner finds "unanimous approval * * * by the MEC and ratification by 75 per cent of the group. * * * " at "P. App. 88-90", but we cannot.
19	The words deleted between "just" and "throw" in the quotation from Whitacre's testimony (paragraph 2) results in an erroneous paraphrase of the actual testimony, which was: ". . . why just—just throw—he would throw it away and we would forget the whole thing."
31	The footnote citation to *WES Chapter, FEIA* v. *National Mediation Board* should read 314 F. 2d 234.
52	The citation to *NLRB* v. *Kearney & Trecker Corp.* should read 237 F. 2d 421.
60	Although no deletion is indicated, the following words are omitted after "with" in the third from the last line in the quotation at the top of the page: "the pilots on flight officer pay under".